



PATENT
Attorney Docket No. 09812.0359-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Shinobu KURIYA et al.) Group Art Unit: 2136
Application No.: 10/624,019) Examiner: Okoronkwo, C. C.
Filed: July 21, 2003) Confirmation No: 5079
For: INFORMATION PROCESSING)
APPARATUS, INFORMATION)
PROCESSING METHOD, AND COMPUTER)
PROGRAM USED THEREWITH)

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Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants request a pre-appeal brief review of the Final Office Action dated July 3, 2007 and the Advisory Action dated August 17, 2007. This Request is being filed concurrently with a Notice of Appeal.

I. Requirements For Submitting a Pre-Appeal Brief Request for Review

Applicants have met each of the requirements for a pre-appeal brief review of rejections set forth in an Office Action. The application has been at least twice rejected. Applicants have filed a Notice of Appeal with this Request, and have not yet filed an Appeal Brief. Applicants submit this Pre-Appeal Brief Request for Review that is five (5) or less pages in length and sets forth legal or factual deficiencies in the rejections. See Official Gazette Notice, July 12, 2005.

II. Status of the Claims

In the Final Office Action, the Examiner rejected claims 1-27 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2006/0224903 to Ginter et al. ("*Ginter*").

III. The rejection of Claims 1-27 under 35 U.S.C. § 102(b) as being anticipated by *Ginter* is improper

Applicants respectfully traverse the rejection of claims 1-27 under 35 U.S.C. § 102(b). Independent claim 1 recites an information processing apparatus comprising a "means for receiving a response to [a] restoring request from [a] license server, the response including usage-right identifying information corresponding to . . . [a] usage right having previously been issued to one of said information processing apparatus and the user [of the information processing apparatus]" (emphasis added). *Ginter* fails to teach or suggest at least this subject matter of claim 1.

Ginter discloses a "distributed virtual distribution environment (VDE)" including electronic appliances, and the VDE is used to enforce secure handling and control of electronic content (*Ginter*, abstract). *Ginter* further discloses that a user registers with a VDE repository that contains electronic content, and that the repository also contains electronic agreement information indicating usage restrictions on the electronic content (*Ginter*, ¶ 2037). Even assuming *Ginter's* electronic agreement information corresponds to the claimed usage right, *Ginter* does not disclose a restoring request for previously issued electronic agreement information. Therefore, *Ginter* fails to teach or suggest a "response including usage-right identifying information corresponding to ... [a] usage right having previously been issued" (emphasis added) as recited by independent claim 1.

In a Reply to Office Action filed April 3, 2007 ("the Reply"), Applicant amended independent claim 1 to recite a "usage right having previously been issued to one of said information processing apparatus and the user" (Reply at p. 2). Applicant also pointed out that *Ginter* does not teach or suggest a restoring request for previously issued electronic agreement information (Reply at p. 16).

In the Final Office Action mailed July 3, 2007, the Examiner did not respond to Applicant's position that *Ginter* does not disclose a restoring request corresponding to a previously issued usage right. This failure to address Applicants' reasoning is improper. M.P.E.P. § 707.07(f) indicates that "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." Because the Examiner failed to properly address Applicants' traversal of the 35 U.S.C. § 102(b) rejection, the finality of the Office Action mailed July 3, 2007 is improper.

Applicants filed a Request for Reconsideration on July 30, 2007 ("the Request"), again pointing out the deficiencies of *Ginter*, and requesting the Examiner to identify what teaching or suggestion in *Ginter* allegedly corresponds to the claimed "usage right having previously been issued" (Request at pp. 4-5). In the Advisory Action mailed August 17, 2007, the Examiner again declined to identify such a usage right.

In addition to the above-noted deficiencies in the Final Office Action and the Advisory Action, the Examiner continues to address the claims as originally presented, without accounting for the amendments presented in the Reply. As discussed, claim 1 was amended in the Reply to recite:

means for receiving a response to the restoring request from said license server, the response including usage-right identifying information corresponding to ~~at least one~~ the usage right, the usage right having

previously been already issued to one of said information processing apparatus and the user thereof;

(Reply at p. 2). For example, at p. 4 of the Final Office Action, the Examiner continues to address the recitations of claim 1 as originally presented, without taking into account the amendments presented in the Reply. On p. 2 of the Advisory Action, the Examiner again fails to address the amendments to claim 1.

To the limited extent that the Examiner attempts to respond to Applicant's position in the Advisory Action, the Examiner simply cites to ¶ 2042, lines 1-30 of *Ginter* when addressing the "means for receiving a response" of claim 1 (as originally presented).

However, the cited portions of *Ginter* disclose:

In this example, when an end user requests content from the VDE repository (e.g. by selecting from a menu of available options), the content system 3302A locates the content either in the content references and/or in content storage. The content system 3302A may then refer to information stored in the content catalog 3322, the end user's account profile, and/or the author's account profile to determine the precise nature of container format and/or control information that may be required to create a VDE content container to fulfill the end user's request. The shipping system then accesses the clearinghouse system 3302B to gather any necessary additional control structures to include with the container to determine any characteristics of the author's and/or end user's account profiles that may influence either the transaction(s) associated with delivering the content to the end user or with whether the transaction may be processed. If the transaction is authorized, and all elements necessary for the container are available, the controls packager forms a package of control information appropriate for this request by this end user, and the container packager takes this package of control information and the content and forms an appropriate container (including any permissions that may be codeliverable with the container, incorporating any encryption requirements, etc.) If required by the repository or the author's account profile, transactions related to delivery of content are recorded by the transaction system of the shipping system. When the container and any transactions related to delivery have been completed, the container is transmitted across the network to the end user.

(*Ginter*, ¶ 2042). However, nothing in the cited portions of *Ginter* can fairly be characterized as a "response to [a] restoring request" (emphasis added). Moreover,

nothing in the cited portions of *Ginter* indicates that the requested content has previously been issued to either the end user or an information processing apparatus.

Thus, *Ginter* fails to teach or suggest the claimed "usage right having previously been issued to one of said information processing apparatus and the user" (emphasis added) as recited by independent claim 1. Moreover, as discussed, the Examiner has failed repeatedly failed to address Applicant's reasoning that *Ginter* fails to teach or suggest this subject matter of claim 1. Finally, the Examiner has failed to address the amended claims as presented in the Reply. For at least these reasons, the rejection of claim 1 under 35 U.S.C. § 102(b) is improper.

Although of different scope than claim 1, *Ginter* does not anticipate independent claims 6, 10, 15, 19, and 24 for at least the same reasons as claim 1. Claims 2-5 depend from claim 1, claims 7-9 depend from claim 6, claims 11-14 depend from claim 10, claims 16-18 depend from claim 15, claims 20-23 depend from claim 19, and claims 25-27 depend from claim 24. Therefore, the rejection of claims 2-27 under 35 U.S.C. § 102(b) is improper for the same reasons discussed above with respect to independent claim 1.

IV. Conclusion

In view of the foregoing, claims 1-27 are in condition for allowance. Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: September 20, 2007

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